

"There is no way we can compete with BellSouth.net," IgLou co-founder Dan Gregoire said. "BellSouth has the ability to manipulate the market."

According to Gregoire, the lowest wholesale rate, \$29 per month per line, is reserved for ISPs that can commit to selling 40,000 DSL lines. The highest price break, \$45 per line per month, is for ISPs committing to 51 to 200 lines. BellSouth.net currently sells its DSL service for \$49.95 per month. Gregoire doesn't have the option to buy DSL from another wholesaler because players such as Covad Communications (www.covad.com), NorthPoint and Rhythms NetConnections (www.rhythms.net) haven't entered the Louisville market yet. So he's not selling any DSL. Period.

BellSouth spokeswoman Ellen Jones would not comment directly on IgLou's complaints, but said: "BellSouth is doing nothing wrong. We are successfully working with ISPs across our region."

Bell Atlantic (www.bellatlantic.com) has been giving East Coast ISPs headaches, but its DSL problems appear to be purely homegrown. The company has become legendary for delaying and/or botching the hookup of local loops — the lines that connect a new DSL customer to the central office — and was recently fined \$13 million by the FCC for failing to adequately serve its voice and data customers. Critics said the fine was a pittance, and that its payment was a calculated cost of doing business.

"Bell Atlantic is being nearly criminally negligent in following up on [local loop] commitments," said Bob DeLorenzi, chief executive of Patriot.net in Fairfax, Va. Customer orders are lost or seriously delayed, and often customers blame their ISPs, not Bell Atlantic.

Pete Castleton, executive director of broadband data products at Bell Atlantic, said the company is working to improve its mass-market deployment efforts, focusing on streamlining internal processes, but said the pricing of broadband service is a market issue.

"The cable industry set the pricing for residential broadband in the \$40 to \$45 range," Castleton said. "We have to compete with that price, but we didn't set it."

Castleton also denied accusations that the regulated telephone company is sharing information about ISP customers with its nonregulated ISP, BellAtlantic.net. "That is absolutely not happening. These are two totally separate companies, and we have an army of lawyers making sure that doesn't happen," he said. "We absolutely view ISPs as essential to our DSL deployment."

Under an agreement with the FCC, Bell Atlantic is creating a separate data services company that will handle its DSL deployment and other services,

beginning this summer.

No worries?

Despite some near-term worries, many CEOs are surprisingly sanguine about the future of small ISPs. The consolidation of the sector has been heralded for more than five years without ever coming to pass, as much a testament to ISP owners' flinty determination as the unexpected advantage of serving rural populations that bigger players didn't want.

"Will small ISPs be wiped out [by DSL competition from the RBOCs]? It depends on who you ask," said Ben Silverman, director of systems engineering at Capital Telecommunications (www.captel.com). "Personally, they'll have to pry the keyboard out of my dead hands first."

History is proving to be an excellent survival guide. Just as ISPs beat out RBOCs during the dial-up rush with personalized service, minimal busy signals and solid technical support, many small ISP owners feel the same skill set will deliver them from death by DSL at the hands of the Bells, even if their offerings are more expensive.

"I'm not afraid. You do a good job and the marketplace will reward you," said Jeff Lasman, proprietor of Nobaloney in Riverside, Calif. "I deliver. I speak to [every customer]. I make them feel I'm interested in their needs, and I give them a human contact at any hour."

Dan Foster, vice president of consumer services at Rhythms, another data CLEC, agrees that "ISPs don't have to be bottom of the barrel on pricing if they are providing high-quality customer service. People don't think of customer service as a value-added service, but it is the most important value an ISP can add."

Jawaid Bazayr, CEO of foreThought in Denver, depends on poor service from U S West (www.uswest.com) to chase DSL customers his way.

"U S West is very inflexible in its service offerings, and traditionally the company has burned people so badly in Colorado that there is a lot of resentment," Bazayr said. He doesn't resent U S West, however — the telephone company provides his DSL service at \$32 per month per line, leaving Bazayr with an \$18 margin on each of his \$50 DSL accounts.

Patriot's DeLorenzi holds no such positive feelings toward Bell Atlantic and its DSL network quality, but he is troubled that the Bell's cut-rate pricing, \$49.95 per month, forces him into a defensive sales position.

"You've got to take a negative sales approach — why Bell Atlantic sucks [and our product is better]," said DeLorenzi, who currently has 300 DSL customers.

Some rural ISPs are avoiding the whole DSL issue by offering high-speed wireless service instead. Jason Simonds, proprietor of Midcoast Internet Solutions (www.midcoast.com) in Rockland, Maine, currently has 90 wireless customers and said the system is working well.

"I didn't want to wait for the Bells [to roll out DSL to our area]," Simonds said. "To hell with the telephone companies, they're just going to get in our way."

Many ISP owners recognize that success in the DSL game will be dependent on niche marketing and value-added services. Most offer Web hosting, and some, like DeLorenzi, plan to offer Internet Protocol-based voice services. But DSL hasn't completely reached commodity status yet.

"Customers want high-speed access more than they want services," IgLou's Gregoire said.

"We're way too early in the life cycle of broadband services to call it a commodity," NorthPoint's Levine agreed. "But yes, ISPs do need to be looking to add content."

In anticipation of that, NorthPoint announced its own content initiative, called Blast, which builds on strategic partnerships with companies such as Akamai Technologies (www.akamai.com) and Digital Island (www.digisle.com), to build distribution of CD-ROMs, applications software and other content into the broadband network itself.

DSL market leaders, including NorthPoint, Rhythms and the other major data competitor, Covad, have actually been saying for some time that content needs to be a significant part of the DSL play, because of the anticipated competition on price.

"Our ISP customers are definitely counting on add-on services," said Nani Daniels, director of channel marketing at Covad. "The annuity services — e-mail, hosting — are something the ISP tries to set up, because they add incremental revenue. But we are also seeing new services, things such as customized offers for telecommuters, that ISPs are developing."

Daniels believes that initiatives such as SBC's can actually help ISPs. "It spreads the word about DSL, and it helps sell more lines for everyone," Daniels said. "A lot of customers will want DSL, but they'll want it from the ISP they have now, the company they know and trust."

Brighter days

The economic picture for ISPs will change dramatically this summer, when the FCC's nationally ordered line-sharing initiative is supposed to go into effect. Line sharing will require an incumbent telephone company to allow a data services competitor to have access to

existing phone lines, which can be equipped with Asymmetric DSL access, operating at download speeds up to 1.5 megabits per second, that won't interfere with the existing voice service.

Line sharing will drop the cost of DSL deployment to CLECs and ISPs in multiple ways. First and foremost, it will drop the cost of the DSL line itself by 50 percent. In Minnesota, where line sharing was initially tested and is now available commercially, the price of a copper line dropped from \$18 to \$6, Rhythms' Foster said.

More importantly, Foster said, the cost and time involved in getting a DSL customer up and running will be sharply reduced.

"Provisioning a line can take up to two months today, because you have to order that new line from the Bell company, wait for them to set it up and hope they do it right the first time," Foster said. "During all that time, you have to stay in touch with the customer, and it takes time and people to do that. With line sharing, we'll know which line the service goes onto, and since that line is already up and running, there won't be the lengthy delay."

It has been during the delay period — between the time when an ISP or its CLEC partner ordered a line from an incumbent and the time that line was actually installed — that the Bells are stealing customers, ISPs have claimed. If those claims are accurate, line sharing would represent a diminished opportunity for customers to jump from the ISP/CLEC offering to that of an incumbent.

"We think we can get customers turned up in a week vs. six to eight weeks," Foster said.

G.Lite, the long-awaited consumer-installable version of DSL, is also coming into the network this summer, NorthPoint's Levine said. "We think this will be the first truly consumer-installable product, where you aren't asking the consumer to do what a technician has been doing," she added.

Combined with line sharing, G.Lite helps eliminate most of the role that telephone companies play in helping ISPs install their services and get customers set up. If customers can order modems from their ISPs or buy them at retail outlets, then order a service that can be set up within a week on existing phone lines, with less intervention by the incumbents, ISPs will be able to connect customers more quickly and at lower cost.

If line sharing lives up to its promise, DSL could still become a major boon to ISPs and their best hope for bringing broadband access to their current customers, since cable modems remain part of a primarily closed access system. But the challenges of dealing with incumbents won't completely go away. They'll still have to work with Bell companies to get access to their copper lines — and fend off efforts by Bell companies

to favor their Internet affiliates. Which, even in the new world of broadband access, means ISPs will keep fighting many old-world issues.

Loaded For Bear In Texas

Chad Kissinger is mad as hell. As president of the Texas Internet Service Providers Association, he's playing David against the Goliath of SBC Communications in the increasingly bitter fight over the introduction of high-speed digital services.

But this David has more than just one rock to throw. The trade group of about 100 small Internet service providers (ISPs) from the Lone Star state has amassed a litany of complaints against SBC (www.sbc.com), and alleges the company has withheld local loop lines, poached customers, priced competitors out of the market and shared proprietary information with its own Digital Subscriber Line (DSL) subsidiary, Southwestern Bell Internet Services (public.swbell.net).

SBC officials denied any wrongdoing, but the TISPA (www.tispa.org) has taken its case to the Federal Communication Commission's Enforcement Bureau (www.fcc.gov/eb) in hopes of finding redress.

The situation is particularly dire for the 190 SBC "partner" ISPs that signed lengthy contracts to resell the Bell's DSL service. Recently, SBIS dropped its retail DSL rate to \$39.95 per month — the same price it charges its partners for wholesale access.

"The people that signed up with them are getting their throats cut," Kissinger said.

Luckily, he isn't one of them. As chief executive of Onramp Access (www.onr.com) in Austin, Texas, Kissinger decided he didn't trust SBC and chose to resell DSL service from Covad Communications (www.covad.com), even though he ends up with a higher-priced retail offering than SBIS. "I have kept profitable by giving quality service," Kissinger said.

But the long arm of SBC is still affecting him. Covad has had so many problems with Southwestern Bell in delivering new local lines that it recently offered Kissinger free transit on a Covad backbone between Onramp's Internet access point in Austin and Minnesota, so that it can sell in that market instead.

"It's a sad day when an Austin-based ISP has to go to Minneapolis to compete," Kissinger said.

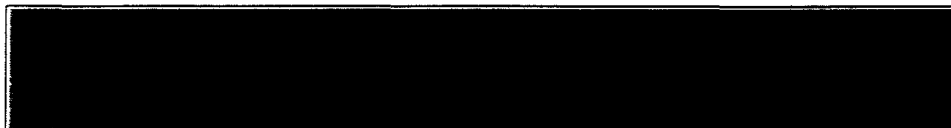
— *Randy Barrett*

State PUCs Assert Jurisdiction Over DSL

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NEWS**SBC Pricing Puts Hurt On Small Texas ISPs**

By Carol Wilson, Inter@ctive Week
 March 23, 2000 1:43 PM ET

A group of Texas Internet service providers has accused SBC Communications of playing dirty in its aggressive marketing of high-speed Digital Subscriber Line service.

Representatives of the Texas Internet Service Providers Association (www.tispa.org) met last week with the Federal Communications Commission's Enforcement Bureau to detail its claims that SBC's pricing and marketing practices are driving smaller ISPs out of business.

Since Southwestern Bell Internet Services dropped its rates to \$39.95 per month on Feb. 14, ISPs have seen their own Digital Subscriber Line sales drop 75 percent, said Scott McCollough, counsel at the TISPA, a trade group that serves about 200 Texas ISPs, including Jump. net, Stick. net and Texas Networking (www.texas.net). Because smaller ISPs have to pay SBC \$30 to \$39 to get a DSL line for resale to their customers, they can't compete with SBIS's price and make a profit.

Compounding the pricing problems, however, are what McCollough and the TISPA call "dirty tricks" that SBC is using to lure customers from independent ISPs onto its own service.

"We know of cases where an SBC installer has shown up at one of our customers' homes to install a line for us, and that installer has asked the customer why they aren't buying their Internet access from SBC at the cheaper rate," McCollough said.

He also cited instances in which the TISPA believes records of SBC's regulated telephone company were shared with its unregulated Internet service unit in clear

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ordered with its unregulated Internet service unit, in clear violation of federal rules that require the phone company to treat its internal data units the same as those of competitors. In addition, SBIS has managed to sign up and provide service to customers, even as an ISP was still waiting for word from SBC (www.sbc.com) as to whether those same customers could get DSL.

"There have been instances where SBC has called every one of an ISP's ISDN [Integrated Services Digital Network] customers to offer them SBC's DSL service," McCollough said. "How can that happen unless SBC's Internet company has access to the telephone company's records?"

The TISPA has asked the FCC's enforcement division to crack down on SBC's marketing practices in hopes of saving smaller Texas companies from extinction, McCollough said. "This is a 911 call, and we're hoping to get the cops, the firemen and the ambulance," he said. "Our companies are not only not growing, they're losing customers to SBC. Our huge fear is that some of the companies that started this business aren't going to be around much longer."

SBC denied targeting smaller ISPs and their customers. It claimed instead to view ISPs "as valuable partners in our efforts to get DSL service out to the broadest possible audience," according to spokesman Michael Coe, who pointed to a \$170 incentive SBC pays to ISPs for each customer they sign up for the DSL service.

SBC met with the TISPA and is investigating its complaints, Coe said. "If we find installers that are doing what they claim, they will be disciplined," he said.

Coe said SBIS pays the same tariff rates for access to DSL lines as other ISPs and does not get preferential treatment from the regulated telephone company.

SBIS said the lower rate for its basic DSL-based Internet access package will continue until April 30. Business or residential customers can get Asymmetric DSL (ADSL) at speeds of 384 kilobits per second to 1.5 megabits per download and can connect back up at 128 Kbps. There are no installation charges and the DSL modem is free. Customers also get a primary e-mail box, with two other e-mail boxes and e-mail aliases, as well as a personal home page.

The low-cost offer is part of SBC's aggressive push to get DSL deployed, an initiative, known as Project Pronto, that will devote \$6 billion to making ADSL available to 77 million customers, according to SBC. Company officials said Project Pronto, announced in October 1999, is running ahead of schedule.

But Coe pointed to ISPs that are succeeding in Texas using SBC's DSL service by building profit margins based on additional services, not transport revenue.

"We are moving toward a time when ISPs make money

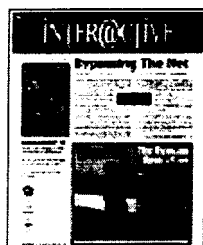
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off services and enhancements, and not off basic access," Coe said. "There are even companies today offering free DSL."

Nani Daniels, director of channel marketing at Covad Communications (www.covad.com), said Covad has ISP partners that are succeeding in Texas by providing value-added services such as e-mail and Web hosting, and by working to keep their current customers.

"We find all the activity by the [incumbent phone companies] is helping by building up interest in DSL," Daniels said. "A lot of consumers who already have an ISP will ask that ISP for DSL service because they'll want to stick with that ISP. And they will be willing to pay a bit of a premium over what the phone company charges to keep their existing ISP."

Most of Covad's ISP customers depend on additional services, including e-mail and Web hosting, to increase their revenue per customer, she added.

But for some ISPs, particularly smaller ones, offering additional services to boost revenue just barely gets them back to breaking even, McCollough said.

That's true in part because the tariffs, or prices, for DSL lines are tied to volume — the fewer lines you order, the more you pay for each line. A small ISP would pay full price, or \$39 for the DSL line, and then pay again for connections into a backbone network service, he said. SBC's \$170 incentive could cover the cost of the customer's modem, but it doesn't provide what an ISP needs — recurring revenue.

ISPs that compete with other SBC-owned companies, including Ameritech, Nevada Bell and Pacific Bell, have also complained in industry discussion groups that the new pricing puts them at an extreme disadvantage in building a business case.

A spokesman at the FCC's Enforcement Bureau (www.fcc.gov/eb) did not respond to a request for further information on how the FCC might respond to the TISPA's complaints.

At a Glance: Where's the profit?

Monthly DSL costs for average small Texas ISP
(All costs per subscriber)

> DSL loop from SBC:	\$39
> Connection to SBC ATM cloud	\$.50
> Setup	\$225 (paid by customer)
> DSL modem	\$250 (paid by customer)
> Internet access:	\$12
> Tech support	\$2
> Overhead	\$6
Total cost	\$59.50

Source: TISPA

SBC's Latest DSL Offer

- > Unlimited access
- > Free DSL modem
- > Free setup

Retail Price \$39.95 per month

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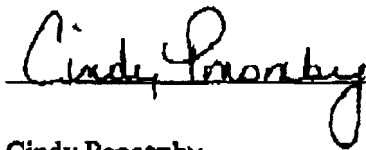
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AFFIDAVIT OF CINDY PONSONBY

1. My name is Cindy Ponsonby. I am over 18 years of age and am competent to make this affidavit. The statements in this affidavit are true and correct according to my personal knowledge.
2. I presently serve as Office Manager for a firm in Houston, Texas. As Office Manager, I am responsible for purchasing communications systems for the firm, including internet access services.
3. In January 2000, I placed an order for DSL services with PDQ.net, a local internet service provider ("ISP") based in Houston, Texas. After waiting several weeks without receiving the DSL service I had ordered, I contacted PDQ.net to determine the status of the DSL order. In March 2000, I discovered that although PDQ.net had attempted to place my order with Southwestern Bell Telephone Company ("SWBT"), SWBT had informed PDQ.net that the copper loop to my office did not qualify for the DSL service I had ordered.
4. Surprised by the amount of time required to install my DSL service, I contacted SWBT directly on March 21, 2000 to determine the status of the DSL order. The SWBT representative did not have an installation date for my DSL service and informed me that my order had been placed on a waiting list. The SWBT representative also told me that SWBT had placed all third-party ISP DSL orders (including the order I placed through PDQ.net) on hold until all internet customers

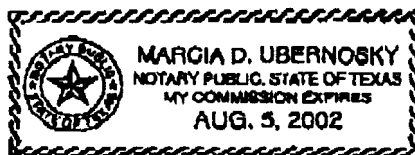
requesting the \$39.95 promotional DSL offer of SWBT and its advanced services affiliate were connected.

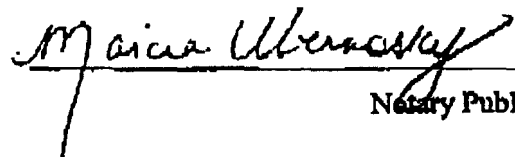
5. During this telephone conversation, the SWBT representative told me that SWBT could install DSL services at the speed I had requested by March 24, 2000 if I placed an order directly with SWBT and its ISP. When I asked why my original order with PDQ.net could not be installed on March 24, the SWBT representative told me that she could not schedule an installation date for the service requested from PDQ.net at this time. As a direct result of these installation delays, I cancelled my previous DSL order with PDQ.net, and submitted my DSL order to SWBT and its ISP. I subsequently cancelled my firm's order with SWBT and its ISP and placed the order with another carrier because SWBT was unable to provide the number of IP addresses required by our firm.



Cindy Ponsonby

Subscribed and sworn to before me on this 20th day of April, 2000.




Notary Public

My commission expires:

COVAD COMMUNICATIONS CO.

April 14, 2000

PROJECT 20400

SECTION 271 COMPLIANCE	§	BEFORE THE
MONITORING OF SOUTHWESTERN	§	PUBLIC UTILITY
BELL TELEPHONE COMPANY OF	§	COMMISSION OF TEXAS
TEXAS	§	

PROJECT NO. 22165

IMPLEMENTATION OF DOCKET	§	
	§	PUBLIC UTILITY
NUMBERS 20226 AND 20272	§	COMMISSION OF TEXAS

PROJECT NO. 16251

INVESTIGATION OF	§	
SOUTHWESTERN BELL	§	
TELEPHONE COMPANY'S	§	PUBLIC UTILITY
ENTRY INTO TEXAS INTERLATA	§	COMMISSION OF TEXAS
TELECOMMUNICATIONS MARKET	§	

**COMMENTS OF COVAD COMMUNICATIONS COMPANY
REGARDING IMPLEMENTATION OF THE DSL
ARBITRATION AWARD AND SWBT'S 271 COMMITMENTS**

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TEXAS	§	

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SOUTHWESTERN BELL	§	
TELEPHONE COMPANY'S	§	PUBLIC UTILITY
ENTRY INTO TEXAS INTERLATA	§	COMMISSION OF TEXAS
TELECOMMUNICATIONS MARKET	§	

**COMMENTS OF COVAD COMMUNICATIONS COMPANY
REGARDING IMPLEMENTATION OF THE DSL
ARBITRATION AWARD AND SWBT'S 271 COMMITMENTS**

Covad Communications Company ("Covad") files its Comments regarding the implementation by Southwestern Bell Telephone Company ("SWBT") of Arbitration Award, Docket Nos. 20226 & 20272, *Before the Public Utility Commission of Texas* (Nov. 30, 1999) ("DSL Arbitration Award"), the resulting interconnection agreement between Covad and SWBT, and commitments made by SWBT in Project No. 16251.

INTRODUCTION

The Arbitrators in Docket Nos. 20226 & 20272 issued the DSL Arbitration Award on November 30, 1999. SWBT's obligations under the resulting Interconnection Agreement between Covad and SWBT became effective on February 18, 2000. SWBT

also assumed obligations regarding DSL in Project No. 16251 in an effort to gain this Commission's approval of its federal 271 Application. To date, however, SWBT has not fulfilled several of its obligations. In particular,

- SWBT has not "enhanced" the ordering process imposed upon its competitors, requiring Covad and other DSL CLECs to endure SWBT's inefficient and discriminatory "reject/supplement" procedure;
- Although SWBT claims that it requires CLECs to specify PSD masks merely "to maintain an inventory of potentially interfering technologies," SWBT rejects loop requests if the specified PSD mask does not match SWBT's internal standards, in violation of the Arbitration Award;
- SWBT has not implemented the "DLC Workaround" process required by the Arbitration Award and Covad's Interconnection Agreement;
- SWBT has not proved that all aspects of its discriminatory "Selective Feeder Separation" scheme have been dismantled.

In sum, SWBT has failed to fulfill its obligations under the Arbitration Award, its agreement with Covad, and the agreements made in Project No. 16251.

ARGUMENT

I. SWBT HAS NOT "ENHANCED" THE CLEC ORDERING PROCESS.

In her December 15, 1999 affidavit, SWBT witness Carol Chapman claims that SWBT has improved pre-ordering and ordering procedures imposed upon CLECs, enhancing CLECs ability to compete. (Chapman Aff. at 3.) As shown below, however, SWBT's so-called "improvements," do not remedy the fundamental problem with SWBT's process: SWBT's "reject/supplement" requirements.

A. SWBT Unnecessarily Rejects Complete and Accurate CLEC Orders, Requiring CLECs to Submit a Supplemental Order to Have the Original Order Provisioned as Requested.

Although a CLEC may submit a complete and accurate order to SWBT, SWBT often "rejects" such an order, requiring the CLEC to endure the burden and delay of

issuing a supplemental order to have its original request honored. Presently, SWBT rejects complete and accurate LSRs because, *inter alia*,

- The Requested Loop Is Too Long—*According to SWBT's internal standards*, the requested loop is too long to support service, as indicated by the PSD mask, that the CLEC intends to provide;
- The Requested Loop Requires Conditioning—The requested loop contains excessive bridged-tap, load coils, or repeaters.

As shown below, SWBT's rejection of the CLEC LSR in both situations is unnecessary and discriminatory.

Such process impediments are significant. When SWBT unnecessarily rejects orders and requires CLECs to submit supplemental orders, it at least doubles (and often triples and quadruples) CLECs' administrative burden by requiring CLECs to manage several LSRs per circuit instead of just one. This added burden becomes a significant competitive disadvantage when order volume increases to commercial levels, as Covad is now experiencing. SWBT's cumbersome "reject/supplement" process also adds several days to the ordering and provisioning process. Finally, SWBT's process distorts loop provisioning performance measures by "restarting the clock" upon the submission of a supplemental order—usually three or more business days *after* a CLEC submitted its original order.

B. SWBT May Not Use Its Internal PSD Standards to Reject CLEC Orders.

Covad's loop length standards for its various xDSL services are different from SWBT's internal standards. Indeed, in most cases, Covad's standards allow it to provision a particular xDSL service on loops much longer than would be allowed by

SWBT's internal standards. The arbitrators in the Covad/Rhythms Arbitration recognized this fact. Thus, under the Arbitration Award and Covad's Interconnection Agreement, SWBT may not impose limitations on the transmission speeds of Covad's DSL services and may not restrict Covad's services "to a level at or below those provided by SWBT." (Agreement ¶ 4.3.) Although Covad must disclose the PSD mask of the service it intends to provide over the requested loop, SWBT may use this information "for the *sole* purpose of maintaining an inventory of advanced services present in the cable sheath." (Agreement ¶ 4.3 (emphasis added).)

SWBT's rejection of CLEC orders that do not comply with SWBT's internal PSD standards violates both of these contractual provisions. First, SWBT is using PSD Mask information submitted by CLEC for purposes other than "maintaining an inventory of advanced services present in the cable sheath." By using PSD mask information to reject CLEC orders and require the issuance of a supplemental LSRs (ostensibly to "confirm" that the CLEC desires a "non-standard" loop), SWBT is unlawfully using PSD mask information to qualify loops.¹

Moreover, by rejecting orders that do not qualify under SWBT's internal PSD standards, SWBT wrongfully restricts CLEC services "to a level at or below those provided by SWBT." (Agreement ¶ 4.3.)² Although a CLEC can eventually obtain the requested loop by submitting a supplemental LSR, the delay and administrative burden imposed by this process constitutes a discriminatory restriction in violation Covad's interconnection agreement and the Arbitration Award.

¹ As stated above, such PSD qualification is completely unnecessary. After receiving appropriate loop make-up data, a CLEC can determine whether a loop qualifies under its own, CLEC-specific, standards.

Accordingly, the Commission should order SWBT to stop using PSD information to reject CLEC orders.

C. Under the Arbitration Award, SWBT Must Allow CLECs to Request Necessary Conditioning “at the Time of Ordering.”

Presently, SWBT’s pre-qualification tool does not provide real-time access to actual loop make-up data . As a result, Covad, like other DSL CLECs, submits its request for loop make-up information with its original LSR. Under the present process, SWBT rejects the LSR if conditioning is necessary, requiring the CLEC to issue a supplemental LSR to have the conditioning performed. SWBT refuses to allow CLECs to avoid the reject/supplement process by requesting necessary conditioning, if any, on the original LSR.

SWBT’s refusal violates the Arbitration Award. In the Award, the arbitrators concluded that SWBT’s “ordering process should also encompass any conditioning requested by Petitioners, *e.g.*, *at the time of ordering*, Petitioners should be able to instruct SWBT as to what conditioning is requested.” Arbitration Award at 63, Docket Nos. 20226 & 20272, *Before the Public Utility Commission of Texas* (Nov. 30, 1999) (emphasis added) (hereinafter “Arbitration Award”). If CLECs were allowed to request necessary conditioning on the original LSR, SWBT would have no reason to reject the LSR and CLECs would be spared the delay and administrative burden of submitting a supplemental LSR. Accordingly, the Commission should force SWBT to comply with the Arbitration Award and should order SWBT to allow CLECs to request necessary conditioning, if any, on an original LSR.

² See also Arbitration Award at 35.

II. SWBT HAS NOT IMPLEMENTED THE “DLC WORKAROUND” REQUIRED BY THE ARBITRATION AWARD AND COVAD’S INTERCONNECTION AGREEMENT.

Under paragraph 4.1.5 of Covad’s Interconnection Agreement,

[i]n locations where SWBT has deployed (1) Digital Loop Carrier (“DLC”) systems and an uninterrupted copper loop is replaced with a fiber segment or shared copper in the distribution section of the loop; (2) Digital Added Main Line (“DAML”) technology to derive two voice grade POTS circuits from a single copper pair; or (3) entirely fiber optic facilities to the end user, SWBT will make the following options available to CLEC

[(1) W]here spare copper facilities are available . . . CLEC has the option of requesting that SWBT make copper facilities available . .

..

[(2)] In addition, CLEC has the option of collocating a [DSLAM] in SWBT’s RT

[(3)] Where CLEC is unable to install a DSLAM at the RT or obtain spare copper loops necessary to provision an xDSL service, and SWBT has placed a DSLAM in the RT, SWBT must unbundle and provide access to its DSLAM.

(Agreement ¶ 4.1.5.)

Shortly after Covad’s Interconnection Agreement became effective on February 18, 2000, Covad requested the above DLC Workaround for loop orders that had been denied because of the presence of DLC. SWBT refused to honor Covad’s request, stating that no such process was available to Covad. After Covad directed SWBT to the appropriate contract language, SWBT still contended (as recently as April 14, 2000) that such workarounds are available only for IDSL loops (a bizarre contention considering that IDSL loops are the only type of xDSL loops that can operate over DLC and do not need to be “worked around” such equipment).

Accordingly, the Commission should order SWBT to implement the DLC Workaround described above, including any procedures necessary for CLECs to verify the availability of the Workaround.

III. SWBT HAS NOT PROVED THAT IT HAS DISMANTLED ITS DISCRIMINATORY SELECTIVE FEEDER SEPARATION (“SFS”) SCHEME.

The Arbitration Award ordered “that SWBT stop using its proposed spectrum management process, SFS.” (Arbitration Award at 47.) The Award found that the SFS process “has the effect of discriminating against deployment of xDSL services other than ADSL, especially in relation to the availability of clean copper loops for use by xDSL providers.” (*Id.*) The FCC came to the same conclusion on December 9, 1999, where, in the *Third Advanced Wireline Services Order*, the FCC ordered SBC to “dismantle” its SFS process within sixty days of release of that Order. *Third Advanced Wireline Services Order* ¶ 216.

Despite those two legal mandates, it does not appear that SWBT has dismantled its discriminatory SFS process. While the process is not being used to prevent Covad loops from being installed, SWBT is still using spectrum information (*i.e.* PSD masks) to delay provisioning of a substantial number of Covad DSL loop orders in the same manner it has delayed provisioning since Covad’s Texas launch in August 1999.

Accordingly, this Commission should require SWBT to prove that it has dismantled completely its discriminatory selective feeder separation scheme.

CONCLUSION

For the foregoing reasons, this Commission should conclude that SWBT has not implemented the Arbitration Award or its 271 commitments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all counsel of record via hand-delivery, first-class mail, or facsimile this 14th day of April, 2000.

CHRISTOPHER V. GOODPASTOR

COVAD COMMUNICATIONS CO.

April 20, 2000

PROJECT 20400

SECTION 271 COMPLIANCE	§	BEFORE THE
MONITORING OF SOUTHWESTERN	§	PUBLIC UTILITY
BELL TELEPHONE COMPANY OF	§	COMMISSION OF TEXAS
TEXAS	§	

PROJECT NO. 22165

IMPLEMENTATION OF DOCKET	§	
	§	PUBLIC UTILITY
NUMBERS 20226 AND 20272	§	COMMISSION OF TEXAS

PROJECT NO. 16251

INVESTIGATION OF	§	
SOUTHWESTERN BELL	§	
TELEPHONE COMPANY'S	§	PUBLIC UTILITY
ENTRY INTO TEXAS INTERLATA	§	COMMISSION OF TEXAS
TELECOMMUNICATIONS MARKET	§	

**COMMENTS OF COVAD COMMUNICATIONS COMPANY
REGARDING DEPLOYMENT OF ADVANCED SERVICES**

Pursuant to Order No. 2, Covad Communications Company ("Covad") files its
Comments regarding the deployment of advanced services in Texas.

**I. SWBT MAY NOT SURREPTITIOUSLY IMPOSE ITS OWN SPECTRUM
MANAGEMENT STANDARDS.**

In the Advanced Services Order and the Line-Sharing Order, the FCC established
procedures and standards for the development and implementation of spectrum
management policies in a competitively neutral manner. In both Orders, the FCC
emphasized that incumbent LECs may not unilaterally dictate spectrum management
standards. (*Advanced Services Order* ¶ 70; *Line-Sharing Order* ¶ 180.)

Despite these admonitions, SWBT surreptitiously has imposed “draft” T1E1 spectrum management standards upon CLECs by incorporating such standards into its xDSL UNE ordering process. Although many carriers, including Covad, are participating in the T1E1 spectrum management forum, most T1E1 standards have not been finalized and are not suitable for implementation. Indeed, even “final” standards adopted by T1E1 should not be implemented until reviewed and approved by the FCC. (*Line-Sharing Order* ¶ 183 (“We remain convinced . . . that the Commission is compelled to play a role in fostering timely, fair, and open development of standards for current and future technologies.”).¹ For example, if the FCC is not satisfied that T1E1 is safeguarding principles of competitive neutrality and promoting innovation, it “will look to other industry standards bodies that uphold these principles or [it] will exercise [its] authority to assume the standards-setting function [itself].” (*Line-Sharing Order* ¶ 191.) Accordingly, this Commission should ensure that SWBT does not impose spectrum management standards—through its ordering process or otherwise—until the FCC determines that such standards are appropriate.

II. SWBT DISCRIMINATES AGAINST THIRD PARTIES IN ORDER ADMINISTRATION AND DSL PROVISIONING.

A. SWBT Discriminates Against Third-Party Orders.

As shown by the attached affidavit of an end-user of DSL services, SWBT placed third-party orders “on hold” in March 2000 until all internet customers requesting the \$39.95 promotional DSL offer of SWBT, its DSL affiliate, and its ISP were connected.

¹ The FCC’s Line-Sharing Order contemplates the amendment of the charter of the Network Reliability and Interoperability Council (NRIC) to advise the Commission on the spectrum management recommendations of T1E1.4. (*Line-Sharing Order* ¶ 184-85.) The FCC created the NRIC’s advisory responsibility in response to CLEC concerns that T1E1.4 is dominated by incumbent LECs. (*Line-Sharing Order* ¶ 184.)